IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04..9..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos.24435 and 24918 of 2003, 10309 and 10310 of 2004, 11195 of 2006 and 12299 of 2006

and

W.P.M.P. Nos.30073 and 30074 of 2003 in W.P.No.24435 of 2003, W.P.M.P. Nos.30638 and 30639 of 2003 in W.P.No.24918 of 2003, W.P.M.P. No.12735 of 2006 in W.P.No.11195 of 2006

Balasubramanian .. Petitioner in W.P.No.24435 of 2003
V.Manickam .. Petitioner in W.P.No.24918 of 2003
S.Xavier .. Petitioner in W.P.No.10309 & 10310 of 2004
R.Gunasekaran .. Petitioner in W.P.No.11195 of 2006
K.Manavalan .. Petitioner in W.P.No.12299 of 2006

vs.

The Management of Tamil Nadu
State Transport Corporation Ltd.
(Madurai Division - II) Ltd.
Rep. by its General Manager
19 Thiruvanandapuram Road
Vannarapettai
Tirunelveli .. Respondent in W.P.No.24435 & 24918 of 2003

Tamil Nadu State Transport Corporation
(Coimbatore Division - I) Ltd.
Rep. by its General Manager
37 Mettupalayam Road, Coimbatore

The Managing Director
Tamil Nadu State Transport Corporation
(Coimbatore Division - I) Ltd.
37 Mettupalayam Road
Coimbatore .. Respondents in W.P.No.10309 & 10310 of 2004

Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.
Rep. by its General Manager
Kumbakonam .. Respondent in W.P.No.11195 / 2006

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The Management of Tamil Nadu
State Transport Corporation
(Villupuram) Ltd.
Rep. by its Managing Director
Kancheepuram .. Respondent in W.P.No.12299 / 2006

W.P.No.24435 of 2003 filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorarified Mandamus calling for the records relating to the order No.7523/Nir 11/TNSTC/Ma Ko 2/2001 dated 22.10.2002 passed by the respondent refusing to provide the petitioner alternate employment and quash the same and for a direction to the respondent to provide the petitioner a suitable alternative job with pay protection and continuity of service.

WP.No.24918/03, 10309/04:-

Petitions presented to this court under Article 226 of the Constitution of India to issue a writs of certiorarified Mandamus after calling for the records relating to the order (i) AA.NOOB7/Nir 11/TNSTC Ma.Ko.2/2003 dated 29.8.2003 passed by the respondent, quash the same and consequently direct the respondent to continue the petitioner in Service with suitable post with pay protection and service benefits (ii) dated 23.1.98 in Ref.No. . g2/7170/CBE.Div I/96 and the order No. the order No. 2195/E3/Pa Thu.Pi-1/ TNSTCC CBE-Div 1/2000 dated 24.7.2000 passed by the 1st respondent and the order passed by the 2nd respondent in Ref.No.19048/CS/Pa.Thu.Pi-1/TNSTC/CBE - Div 1/2003 dated 11.2.2003 quash the same and consequently direct the respondents to provide the petitioner suitable alternative right duty with pay protection, continuity of service, backwages and other attendant benefits.

WP.No.10310/04: II. Petition presented to issue a writ of Mandamus directing the respondents to provide comparrinate appointment to the petitioners daughter Selvi Victoria Kala Rani forthwith.

WP.No.11195/06, 12299/06:-

Petitions presented to this court under Article 226 of the Constitution of India to issue a writs of certiorarified Mandamus after calling for the records pertaining to the (i) impugned order dated 4.10.2003 passed by the respondent in Memo No. TNSTC/Ku.Ko-1/E3/311/2003 quash the same and consequently direct the respondent provide to the petitioner suitable alternative employment with continuity of service, benefits with arrears and all other consequential benefits together with interest.

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2) order dated 17.2.2006 passed by the respondent in Memo No.2187/Sa.1/TNSTC/05 quash the same and consequently direct the respondent to give the petitioner continuity of service, pay protection and other attendant benefits with arrears and all other consequential benefits from the date of dis charge by counting the petitioner service as conductor and also to grant injury be are to the petitioner with salary.

For Petitioner in all Wps : Mr.D.Hariparanthaman

For Respondent 1 in W.P.Nos.10309 & 10310 of 2004 : Mr.Rajnish Pathiyil & Mr.R.Palanisamy

For Respondents in W.P.Nos.24435 & 24918 of 2003 : Ms.Kala Ramesh

For Respondents in W.P.Nos.11195 & 12299 of 2006 :Mr.C.Kanagaraj

C O M M O N O R D E R

The petitioner in W.P.No.24435 of 2005 was a Driver and by the impugned order dated 22.10.2002, he was informed that he will not be given any alternative employment. Earlier, the petitioner suffered multiple fractures in both of his legs and was discharged on account of medical unfitness.

2. The petitioner in W.P.No.24918 of 2003 was working as a Driver and challenges the impugned order dated 29.8.2003 wherein he had eye test done by the Medical Board

and the Medical Board found him unfit to be a Driver and because of that, he was discharged from service.

3. The petitioner in W.P.No.10309 of 2004, was working as a Driver and by the impugned order dated 24.7.2000, he was refused for any alternative employment and he was only given a promise of giving some compensation. In W.P.No.10310 of 2004, the same petitioner in W.P.No.10309 of 2004, seeks for compassionate appointment on account of his medical invalidation. Therefore, W.P.No.10309 and 10310 of 2004 are held together.

4. The petitioner in W.P. No.11195 of 2006 was working as a Driver and by an order dated 04.10.2003, he was found medically unfit to continue in service on account of fracture in his right

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leg and he was discharged from service and that is under challenge.

5. In W.P. No.12299 of 2006, by the impugned order dated 17.02.2006, the petitioner, who was a Conductor, was sent to appear before the Medical Board for medical fitness and on the report of the Medical Board, he was discharged from service with effect from 18.3.1997 and he was given a lump sum as compensation as per the provisions of the Workmen Compensation Act. He was also given alternative employment as a fresh entrant and, therefore, he cannot be given the scale of pay protecting his last drawn salary though he has been working as a Junior Assistant.

6. The question that arises for consideration in all these petitions is that once a person has become physically invalidated due to an accident or otherwise, to discharge the duties done by him, whether there is any obligation for the respondent Corporation to provide any alternative employment and if so, while giving such an alternative employment, whether the petitioners' last drawn salary must be protected by the Corporation and whether the said re-employed workmen can be treated as fresh entrant either agreeing for the same on his own volition or pursuant to any settlement made in that behalf.

7. I have heard the arguments of Mr.D.Hari Paranthaman, learned counsel appearing for the petitioners in all these petitions, Mr.Rajnish Pathiyil and Mr.R.Palanisamy, learned counsel appearing for the first respondent in W.P.No.10309 and 10310 of 2004, Mrs.Kala Ramesh for the respondents in W.P.Nos.4435 and 24917 of 2003 and Mr.C.Kanagaraj, learned counsel appearing for the respondents in the other writ petitions and have perused the records.

8. Mr.D. Hari Paranthaman, learned counsel appearing for the petitioners in all these writ petitions contended that the issues framed in these writ petitions are no longer res integra and have been squarely considered by this Court as well as by the Supreme court in several decisions. He drew the attention of this Court to the following decisions:

(i) 1994 (4) SCC 460 [Narendra Kumar Chandla v. State of Haryana and others]
(ii) 2003 (4) SCC 524 [Kunal Singh v. Union of India and another]
(iii) 2005 W.L.R. 398 [Metropolitan Transport Corporation v. The Presiding Officer, Principal Labour Court and another]
(iv) 2006 (5) CTC 413 [G.Muthu v. Management of Tamil Nadu State Transport Corporation (Madurai) Ltd., Madurai]
(v) 2007 W.L.R. 256 [The State v. K.Mohammed Mustafa]

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Relying on the above said decisions, learned counsel for the petitioners prayed that the relief should be granted as prayed for.

9. The learned respective counsel for the respondents contended that in the given case, the respondent Corporation themselves have granted the relief and that should not be interfered with, lest it may provoke further claim from other persons.

10. Mr.R.Palanisamy, learned counsel appearing for the first respondent in W.P.Nos.10309 and 10310 of 2004, submitted that the petitioner therein was given alternative employment and the Medical Board found him unfit which insisted him to file these petitions. Therefore, no further claim should be made by the petitioner and in view of the same, no relief can be granted in W.P.No.10309 of 2004. Accordingly, the same is dismissed.

11. In W.P.No.10310 of 2004, the petitioner, on account of his medical invalidation, seeks for direction for the appointment of his daughter on compassionate ground. If the Scheme provides so, the respondents are directed to consider the claim made by the petitioner for compassionate appointment of his daughter on account of his medical invalidation, in accordance with law and such exercise shall be undertaken within a period of four weeks from the date of receipt of a copy of this order. With this observation, W.P.No.10310 of 2004 is disposed of.

12. In respect of the other four writ petitions, viz., W.P.Nos.24435 and 24918 of 2003 and W.P.Nos.11195 and 12299 of 2006, the contention made by the learned counsel for the petitioners deserves acceptance. In fact, in a recent judgment made by the Division Bench of this Court, presided over by the Honourable Chief Justice in W.A. No.860 of 2007 [The Management of Tamil Nadu State Transport Corporation (Villupuram Division – III) Ltd., Kancheepuram v. Gnanasekaran], once again the entire issue has been gone into and the following passages found in paragraphs 9, 14 and 17 may be usefully extracted below:

Para 9: "In the light of the decision in Kunal Singh's case, it is clear that Section 47 deals with an employee who has acquired disability during service and it is not necessary that he should have suffered 40% disability. The test is whether an employee, after acquiring disability, has become unsuitable for the post he was holding earlier and it is provided by Section 47 that in such a case, the employee could be shifted to some other post with the same pay scale and service benefits and if it is not possible to adjust the employee against any such post, he may

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be kept in a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. It seems that the decision of the Supreme Court in Kunal Singh's case was not brought to the notice of the learned Judges who rendered the judgment in A. Sengaan's case (supra)."

Para 14: "In a batch of writ petitions being W.P. Nos.409 of 2004 and other connected matters decided on 6.1.2006, one of us (P. Jyothimani, J.) has held that the purport of the Disabilities Act is to give effect to the Proclamation of Full Participation and Equality of the People with Disabilities in the Asian Pacific Region held in Beijing in the first week of December, 1992, to which our country is a signatory, which was intended with a proclamation in the following terms :

"i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
ii) to create barrier-free environment for persons with disabilities;
iii) to remove any discrimination against persons with disabilities in the sharing of development benefits vis-a-vis non-disabled persons;
iv) to counteract any situation of abuse and exploitation of persons with disabilities;
v) to lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and
vi) to make special provision of the integration of persons with disabilities into the social maintenance."

It was held that in view of the object of the Disabilities Act, the contention that alternate employment will be given as and when vacancy arises and in such an event, the employee would be treated as a new entrant has to be rejected. It was also held that there is no necessity for any certificate from a medical authority as contemplated under Section 2(t) or Section 2(p) of the Disabilities Act."

Para 17: "In the instant case the respondent workman became unfit for the duty of the driver as he lost knee

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movement and there is no possibility of regaining his normal movement. It is not disputed before us that the workman is suffering from locomotor disability within the meaning of Section 2(o) of the Disabilities Act. In view of the Supreme Court's decision in Kunal Singh's case (supra) it is clear that the acquisition of disability is not the same as a person with disability and it was not necessary for the workman to establish that he suffers more than 40% disability. In our considered opinion the decision of the Division Bench in Sengaan's case (supra) does not lay down the correct law."

In the light of the same, all the other writ petitions stand allowed.

13. In the result,

(i) W.P.No.10309 of 2004 shall stand dismissed.

(ii) W.P.No.10310 of 2004 shall disposed of with direction to the respondents to consider the claim of the petitioner therein in accordance with law.

(iii) W.P.Nos. 24435 and 24918 of 2003 and W.P. Nos.11195 of 2006 and 12299 of 2006 shall stand allowed. The respondents therein are directed to implement this order within a period of four weeks from the date of receipt of a copy of this order.

However, there will no order as to costs. Consequently, connected Miscellaneous Petitions in the respective petitions will stand closed.

gri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The General Manager
State Transport Corporation Ltd.
(Madurai Division – II) Ltd.
19 Thiruvanandapuram Road
Vannarapettai, Tirunelveli

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2. The General Manager
Tamil Nadu State Transport Corporation
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3. The Managing Director
Tamil Nadu State Transport Corporation
(Coimbatore Division - I) Ltd.
37 Mettupalayam Road, Coimbatore

4. The General Manager
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.
Kumbakonam

5. The Managing Director
State Transport Corporation
(Villupuram) Ltd., Kancheepuram

+ 2 ccs to Mrs. Kala Ramesh Advocate SR No. 55270

+ 1 cc to Mr. D. Hariparanthaman, Advocate SR No. 55184

BV(CO)
SR/10.9.2007

order in
W.P. Nos.24435 of 2003, etc., batch

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